

भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 51] नई दिल्ली, सोमवार, नवम्बर 17, 1969/कार्तिक 26, 1891

No. 51] NEW DELHI, MONDAY, NOVEMBER 17, 1969/KARTIKA 26, 1891

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 17th November, 1969:—

BILL No. XXII OF 1969

A Bill to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Medical Termination of Pregnancy Act, 1969.

Short
title and
extent.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(a) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property;

4 of 1912.

(b) “lunatic” has the meaning assigned to it in section 3 of the Indian Lunacy Act, 1912;

9 of 1875:

(c) “minor” means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority;

102 of 1956.

(d) “registered medical practitioner” means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and whose name has been entered in a State Medical Register.

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45 of 1860

3. (1) Notwithstanding anything contained in the Indian Penal Code, a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub section (4), a pregnancy may be terminated by—

(a) a registered medical practitioner, where the length of the pregnancy does not exceed twelve weeks, or

(b) not less than two registered medical practitioners, acting together, where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks,

if such medical practitioner is, or such medical practitioners are, as the case may be, of opinion in good faith, that—

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II—Where any pregnancy occurs as a result of failure of any device used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involved such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a married woman shall, if such pregnancy is alleged by such woman to have been caused by rape, be terminated except with the consent in writing of her husband, if he is alive, or of the guardian of her husband, if her husband is a minor or lunatic.

(b) No pregnancy of a widow, who is a minor or lunatic, shall be terminated except with the consent in writing of the guardian of such widow.

(c) No pregnancy of an unmarried girl, who has not attained the age of eighteen years, shall be terminated except with the consent in writing of her father or of her guardian, if her father is not alive.

(d) No pregnancy of an unmarried woman, who, being above the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her father or of her guardian, if her father is not alive.

(e) Save as otherwise provided in this sub-section, no pregnancy shall be terminated except with the consent of the pregnant woman.

4. No termination of pregnancy shall be made in accordance with this Act at any place other than—

Place where pregnancy may be terminated.

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government.

5. The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life, or to save permanent grave injury to the physical or mental health, of the pregnant woman.

Sections 3 and 4 when not to apply.

6. (1) The State Government may, by regulations,—

Power to make regulations.

(a) require any such opinion as is referred to in sub-section (2) of section 3 to be certified by a registered medical practitioner or practitioners concerned, in such form and at such time as may be specified in such regulations, and the preservation or disposal of such certificates;

(b) require any registered medical practitioner, who terminates a pregnancy, to give notice of such termination and such other information relating to the termination as may be specified in such regulations;

(c) prohibit the disclosure, except to such persons and for such purposes as may be specified in such regulations, of notices given or information furnished in pursuance of such regulations.

(2) The notice given and the information furnished in pursuance of regulations made by virtue of clause (b) of sub-section (1) shall be given or furnished, as the case may be, to the Chief Medical Officer of the State.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of any regulation made under sub-section (1) shall be liable to be punished with fine which may extend to one thousand rupees.

7. No suit or other legal proceeding shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

STATEMENT OF OBJECTS AND REASONS

The provisions regarding the termination of pregnancy in the Indian Penal Code which were enacted about a century ago were drawn up in keeping with the then British Law on the subject. Abortion was made a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother. It has been stated that this very strict law has been observed in the breach in a very large number of cases all over the country. Furthermore, most of these mothers are married women, and are under no particular necessity to conceal their pregnancy.

2. In recent years, when health services have expanded and hospitals are availed of to the fullest extent by all classes of society, doctors have often been confronted with gravely ill or dying pregnant women whose pregnant uterus have been tampered with, with a view to causing an abortion and consequently suffered very severely.

3. There is thus avoidable wastage of the mother's health, strength and, sometimes, life. The proposed measure which seeks to liberalise certain existing provisions relating to termination of pregnancy has been conceived (1) as a health measure—when there is danger to the life or risk to physical or mental health of the woman; (2) on humanitarian grounds—such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman, etc.; and (3) eugenic grounds—where there is substantial risk that the child, if born, would suffer from deformities and diseases.

NEW DELHI;

K. K. SHAH.

The 23rd August, 1969.

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to provide for the termination of certain pregnancies by registered medical practitioners at Government hospitals. If the Bill is enacted, facilities for increased demand will have to be provided by way of vacuum aspirator, increased number of beds, staff, etc. Recurring expenditure of a sum of about Rs. 24.00 lakhs and a non-recurring expenditure of a sum of about Rs. 19.30 lakhs is likely to be incurred for providing the said facilities.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill seeks to empower the State Governments to make regulations—

(a) requiring the registered medical practitioners to certify the opinion formed by them in pursuance of sub-clause (2) of clause 3,

(b) specifying the form in which and the time at which such certificate shall be furnished and the manner in which such certificate shall be preserved and disposed of,

(c) requiring any registered medical practitioner, who terminates a pregnancy, to give notice of such termination and other information relating to such termination to the Chief Medical Officer of the State,

(d) prohibiting the disclosure, except to such persons and for such purposes as may be specified by the regulations, of notices or information given by the registered medical practitioners in pursuance of the said regulations

2. The matters in relation to which such regulations may be made are matters of detail. The delegation of the legislative power is, therefore, of a normal character.

B. N. BANERJEE,
Secretary.